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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,641	12/30/2003	Lyle Berman		6896

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Gregory M. Friedlander  
Gregory M. Friedlander & Associates, P.C.  
11 South Florida Street  
Mobile, AL 36606-1934

EXAMINER

LAYNO, BENJAMIN

ART UNIT PAPER NUMBER

3711

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/748,641

Applicant(s)

BERMAN, LYLE

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's arguments filed 02/20/06 have been fully considered but they are not persuasive. The rejection of the claims and the Examiner's response to the Applicant's arguments follow.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8-11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ornstein .

The Applicant is referred to the teaching of Ornstein 431' in the first Office action, mailed 4/4/05.

In regard to the claimed "**net** amount of **winning** hands" recited in claim 1, Ornstein 431' recites "With respect to streak bets, **pushes (ties)** may either advance a streak bet or result in a tie with **no effect** on the streak bet", col. 5, lines 10-14. Thus, in Ornstein 431' game, if a player has two consecutive winning hands, then receives a push (tie) hand, the streak bet would still remain in place and the player would not lose the streak bet. The two consecutive winning hands would have remained after the push (tie) hand occurred, and game play would have continued. **Thus, according to Ornstein 431', consecutive winning hands may include push (tie) hands resulting**

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**in a net amount of winning hands.** The player would be paid out based on **net** amount of **winning** hands (number of consecutive winning hands and push (tie) hands).

In claim 1 the recitations "selecting a quantity of play based on criteria from the group comprising a set amount of time, a number of hands **or** combination thereof", and "a total amount from the group consisting of an amount of credits, net amount of winning hands **or** combinations thereof during selected quantity of play" list a plurality of elements and the alternate expression "**or**". Thus in order to meet these claimed recitations, the prior art need only disclose one of these elements. In Ornstein 431', the selected number of consecutive winning hands, is a quantity of play based on a number of hands, see col. 4, lines 17-25.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Moore, Jr. 463'.

The Applicant is referred to the teaching of Moore, Jr. 463', and how this teaching was applied to Ornstein 431' in the first Office action, mailed 4/4/05

5. Claims 2-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Ornstein 885'.

The Applicant is referred to the teaching of Ornstein 885', and how this teaching was applied to Ornstein 431' in the first Office action, mailed 4/4/05.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' in view of Ornstein 885' as applied to claims 2-7 and 13 above, and further in view of Celona.

The Applicant is referred to the teaching of Celona, and how this teaching was applied to Ornstein 431' in the first Office action, mailed 4/4/05.

7. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Acres.

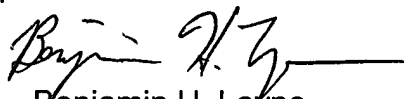
The Applicant is referred to the teaching of Acres, and how this teaching was applied to Ornstein 431' in the first Office action, mailed 4/4/05.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3711

bhl